

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAVELLE EVANS,

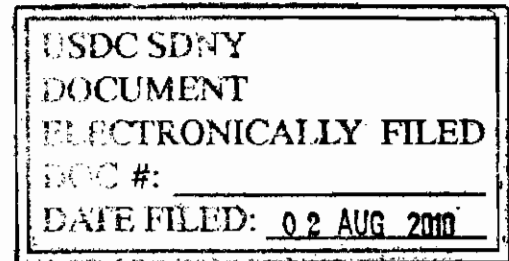
Plaintiff,

No. 09 Civ. 7373 (LTS)

-against-

THE FIRST 48 et al.,

Defendants.



ORDER

In this case arising out of television programs including footage of Plaintiff that were allegedly produced and/or broadcast by defendants The First 48, Marcia Xintaris, Granada America Entertainment, Kirkstall Road Enterprises, Inc., and A&E Television Station (collectively, “Defendants”),¹ plaintiff Lavelle Evans (“Plaintiff”), proceeding pro se, filed a complaint on August 21, 2009, alleging that Defendants misappropriated his image (the “Misappropriation Complaint”). (Docket entry no. 2.) On December 3, 2009, Defendants moved to dismiss the Misappropriation Complaint. (Docket entry no. 14.) On January 20, 2010, in lieu of opposing Defendants’ motion, Plaintiff moved for leave to file an amended complaint (the “Proposed Defamation Complaint”) that would add a new claim of defamation to the original complaint but would not substantively amend Plaintiff’s misappropriation claim. (Docket entry no. 24.) On June 24, 2010, the Court issued a scheduling order extending the deadlines to complete the briefing on both Defendants’ motion to dismiss the Misappropriation Complaint and Plaintiff’s motion for leave to amend the complaint,

¹ The Court relies upon Plaintiff’s identification of the defendants in the complaint for purposes of this Order but notes, however, that Defendants assert that the proper defendant parties in this action are ITV Studios, Inc. (formerly Granada America), Kirkstall Road Enterprises, Inc., Marcia Xintaris, and A&E Television Networks, LLC. (See docket entry no. 26.)

which were previously set forth in the Court's May 4, 2010, Order. (Docket entry no. 40.)

The June 24 Order required that Plaintiff file and serve a new motion to amend the complaint by July 9, 2010. The June 24 Order also required that Plaintiff file and serve a submission opposing Defendants' motion to dismiss the Misappropriation Complaint by July 9, 2010.

Plaintiff has not filed any new motion to amend the complaint and his time in which to do so has expired. Plaintiff has filed and served a Response to Defendants' Motion to Dismiss, which is dated July 9, 2010, but was not received until July 23, 2010. In light of Plaintiff's representation to the Court that the submission arrived late due to difficulties presented by sending mail from prison, the Court will accept the submission as timely filed. The Court has also received Defendants' letter, dated July 19, 2010, requesting permission to file an affidavit and attached exhibits. Defendants assert that they would have filed the submission in opposition to any renewed motion to amend the complaint by Plaintiff and it is necessary to file it at this juncture to preserve the record for appeal. It is hereby

ORDERED, that Plaintiff's motion to amend the complaint is denied in light of Plaintiff's failure to timely file a renewed motion as directed by the Court, despite the Court's granting of multiple requests to extend deadlines on Plaintiff's behalf and explicit instruction in the June 24 Order that "no further requests for extensions of time will be entertained" (see docket entries no. 23, 28, 34, 40; see also Fed. R. Civ. P. 16(f) ("the Court may issue any just orders . . . if a party . . . fails to obey a scheduling or other pretrial order")); and it is further

ORDERED, that Defendants must file and serve (with a courtesy copy for Chambers) a reply to Plaintiff's opposition to the motion to dismiss by **August 20, 2010**, and in the event it is necessary for Defendants to provide Plaintiff with additional materials in order to comply with Local Civil Rule 7.1(c), Defendants shall file a certificate of service attesting to such compliance by **August**

20, 2010.

This Order resolves docket entry no. 24.

SO ORDERED.

Dated: New York, New York
August 2, 2010



LAURA TAYLOR SWAIN
United States District Judge

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